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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/693,350	10/24/2003	Daniel W. Tollenaar	2-5578-004	2710
803	7590	07/19/2004	EXAMINER	
STURM & FIX LLP 206 SIXTH AVENUE SUITE 1213 DES MOINES, IA 50309-4076			KATCHEVES, BASIL S	
			ART UNIT	PAPER NUMBER
			3635	

DATE MAILED: 07/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/693,350

Applicant(s)

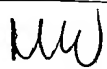
TOLLENAAR, DANIEL W.

Examiner

Basil Katcheves

Art Unit

3635



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 February 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 42-97 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 42-97 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

Claims 1-41 have been cancelled and new claims 80-97 have been added by the applicant in the amendment entered 2/17/04. Pending claims 42-97 have been examined below.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 80-83, 87, 88 and 90-97 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 3,527,006 to Hanson.

Regarding claim 80, Hanson discloses first and second backing members (fig. 2: 96 & 91), a first structure (fig. 2: 50) attached to the first backing and indirectly through studs 82 & 72 to the second backing member (fig. 2: 91). The backing members are spaced from each other (fig. 2: see gap adjacent 85) with two upright studs (fig. 2: 82 & 72) and the second backing member is capable of being disposed between the second stud (fig. 2: 72) and a third stud (fig. 1: see plurality of panel backing) and the second end of the first backing member (fig. 2: 96) is adjacent to the second stud (fig. 2: 72).

Regarding claim 81, Hanson discloses a second structure (fig. 2: 26), a plurality of backing panels (fig. 1) attached to a plurality of studs in the manner as indicated in fig. 2.

Regarding claim 82, Hanson discloses the use of metal for the first structure (column 1, lines 15).

Regarding claim 83, Hanson discloses the use of metal for the structure second(column 1, lines 15).

Regarding claim 87, Hanson discloses the studs as being made of metal (column 7, line 29).

Regarding claim 88, Hanson discloses the studs as having a U shape (fig. 2: 82).

Regarding claim 90, Hanson discloses a wall (fig. 1) having a plurality of metal studs (fig. 2: 82 & 72, and fig 1 where fasteners 97 & 92 are found throughout wall. Fig. 1 shows 5 pairs of studs behind panels). Hanson also discloses a first backing member (fig. 2: 96) spaced between a first stud (shown behind panels of fig. 1, not shown in fig. 2, but would be found in fig. 2 at left end of 96) and a second stud (fig. 2: 82). First and second backing members shown in fig. 1, 95 and 90 located between first and second studs (where fastener holes are located in fig. 1) and the second backing is located between second and third studs (where adjacent set of fastener holes are located in fig. 1) and a first structure (fig. 2: 52) connected directly to a backing member and indirectly connected to another backing member.

Regarding claim 91, Hanson discloses a fourth stud (fig. 1: see 10 sets of stud fasteners) and multiple backing members (fig. 1: 95 & 90 and adjacent unlabelled panels) and a second structure (fig. 2: 26) attached directly to one backing member and indirectly to a second backing member.

Regarding claim 92, Hanson discloses the first structure as attached to a second stud (fig. 2: 82).

Regarding claim 93, Hanson discloses the first structure (fig. 2: 52) as attached to a first stud (fig. 1: shown behind wall 95, and not shown in fig. 2: at left end of backing 96).

Regarding claim 94, Hanson discloses the second structure (fig. 2: 26) as attached to a third stud (fig. 2: 72).

Regarding claim 95, Hanson discloses the second structure (fig. 2: 26) as attached to a fourth stud (fig. 1: behind panels located where fastener holes are, fig. 2: not shown, at far right end of 26).

Regarding claim 96, Hanson discloses a plurality of studs (fig. 1: where stud fasteners 97 and 92 are located throughout wall, and fig. 2: 82 & 72), a plurality of backing members joined between pairs of studs (fig. 1: wall panels 95 & 90 and all adjacent panels in the wall) and spacers (fig. 2: 52 & 26) located between stud pairs and extending throughout the wall of fig. 1 which are directly attached to two backing members (fig. 2: 95 & 96 and indirectly attached to adjacent backing panels (fig 2: 90 & 91)

Regarding claim 97, Hanson discloses the spacer (fig. 2: 52) as attached to a first stud (fig. 2: 82, and where fig. 1: 97 is), a second stud (fig. 2: not shown, but located at left end of 52), indirectly to a third stud (fig. 2: 72) and indirectly to a fourth stud (fig. 2: not shown, located at left end of 52 as mirror image of 72).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 84-86 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 3,527,006 to Hanson.

Regarding claim 84, Hanson does not specifically disclose the first and second backing members as being wood. However, Hanson discloses the backing members as being "wallboard or the like" (column 1, line 13). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Hanson by using wood backing, as wood is similar to standard wallboard and commonly found in hardware stores.

Regarding claim 85, Hanson does not specifically disclose the first, second and third backing members as being wood. However, Hanson discloses the backing members as being "wallboard or the like" (column 1, line 13). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Hanson by using wood backing, as wood is similar to standard wallboard and commonly found in hardware stores.

Regarding claim 86, Hanson does not disclose sheet rock attached to the studs to cover the studs and backing members. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Hanson by using a

sheet rock layer, as sheet rock is commonly used to insulat walls in dwelling structures and adds greater sound and temperature absorbing properties to the walls.

Claims 89 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 3,527,006 to Hanson in view of U.S. Patent No. 3,680,271 to Satchell.

Regarding claim 89, Hanson discloses the use of bent metal studs but does not specifically disclose the use of galvanized metal studs. Satchell discloses a wall system comprised of galvanized metal studs (column 2, line 15). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Hanson by using galvanized metal studs, as disclosed by Satchell, in order to better prevent corrosion.

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 42-79 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-38 of U.S. Patent No. 6,705,056. Although the conflicting claims are not identical, they are not patentably distinct from each other.

Regarding claim 42, claim 1 of '056 claims the basic structure but does claim a second backing member having a vertical groove. '056 claims the first backing member having a vertical groove. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify '056 by having the second backing member have a vertical groove in order to better engage a wall stud.

Regarding claim 43, claim 2 of '056 claims the basic structure but does not claim a third backing member having a vertical groove. '056 claims a second backing member having a vertical groove. It would have been obvious to one having ordinary



skill in the art at the time the invention was made to modify '056 by using a third backing member with a vertical groove in order to better attach it to a wall stud.

Claims 44-46 are substantial duplicates of claims 3-5, respectively, of '056.

Regarding claim 47, claim 16 of '056 claims the basic structure but does not claim a bottom groove in a first side adjacent the bottom of the backing member, '056 claims a horizontal groove in the first side of the backing members. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify '056 by including a groove in adjacent the bottom of the backing member in order to make for a better fit to the wall studs.

Claims 48-58 are substantial duplicates of claims 8-17, respectively, of '056.

Regarding claim 59, claim 18 of '056 claims the basic claim structure but does not claim the second backing member between the vertical stud and the third stud. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify '056 by placing the second backing member between a vertical stud and the third vertical stud in order to support the wall between the first and third studs.

Regarding claim 60, claim 19 of '056 claims the basic claim structure but does not claim a third backing member. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify '056 by using a third backing member in order to extend the length of the wall to a length required by the length of the room.

Claims 61-79 are substantial duplicates of claims 20-38, respectively, of '056.

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**Conclusion**

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The cited patents listed on the included form PTO-892 further show the state of the art with respect to steel studded walls in general.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Basil Katcheves whose telephone number is (703) 306-0232. The examiner can normally be reached on Monday-Friday from 7:30 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Friedman, can be reached at (703) 308-0832.

BK

7/14/04

  
Basil Katcheves

Examiner AU 3635